

# INSPECTION AGREEMENT

## **BETWEEN**

Inspectit Homes Pty Ltd A.C.N. 610 373 512 (**Inspectit Homes**).

## **AND**

The person named in the Pre-Engagement Inspection Agreement to this Inspection Agreement.

## **1. APPLICATION**

1.1 This Inspection Agreement governs the commercial relationship between Inspectit Homes and the Customer.

1.2 Inspectit Homes agrees to provide a Timber Pest Inspection Report and / or Building Inspection Agreement Report on the terms outlined in this Inspection Agreement.

## **2. INTERPRETATION**

2.1 In this Inspection Agreement:

- (a) headings are for reference only and do not affect the meaning of this Inspection Agreement;
- (b) the singular includes the plural and vice versa;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a piece of legislation includes the reference and corresponding regulations as amended from time to time;
- (e) an agreement, representation or warranty:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally;
  - (ii) on the part of two or more persons binds them jointly and severally;
- (f) no rule of construction applies to the disadvantage of a party because that party put forward this Inspection Agreement or any portion of it;
- (g) a reference to:
  - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
  - (ii) a document includes any variation or replacement of it and all schedules, annexures and exhibits to the document;
  - (iii) a law includes regulations and other instruments under it and amendments or replacements of any of them;
  - (iv) a thing includes the whole and each part of it;
  - (v) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;

- (h) a reference to “\$” is a reference to Australian currency;
- (i) all references to dates and times are to Brisbane times and dates; and
- (j) “Including” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.

### 3. DEFINITIONS

**Building Element** means a part of a building performing a particular function either singularly or in conjunction with other such parts.

**Building Inspection** means an inspection carried out under clause 5.2.

**Defect** means a variation or fault in material or a component or assembled element that deviates from its intended appearance or function.

**Inspector** means Inspectit Homes, or a person or other entity authorised by Inspectit Homes, who provide a Building Inspection under the terms of this Inspection Agreement.

**Major Defect** means a defect of such significance that without correction would not avoid safety concerns, loss of the intended practical performance of the Building Element or an additional decline in the existing condition of the Property.

**Property** means the property address listed in the Pre-Engagement Inspection Agreement.

**Reasonable Access** means areas that, in the Inspector’s absolute discretion, are accessible without a risk of safety concerns, obstructions, or if the space available is less than any of the following:

(a) Roof Void – the dimensions of the access hole must be at least 500mm x 400mm, and, reachable by a 3.6M ladder, and, there is at least 600mm x 600mm of space to crawl;

(b) Roof Exterior – must be accessible by a 3.6M ladder placed at ground level; and

(c) Reasonable access does not include the use of destructive or invasive inspection methods. Nor does reasonable access include cutting or making access traps, or moving heavy furniture or stored goods.

**Report** means any Report issued by Inspectit Homes to the Customer in respect of the Services.

**Services** means the services outlined in the schedule to this Inspection Agreement

**Timber Pest** means there are various wood destroying agents which affect the structural integrity of timbers as follows:

(a) Fungal Decay – the breakdown of timber through chemical reaction with moisture causing wood decay fungi/wood rot;

(b) Wood Borers – wood insects that destroy timbers, insect group (order coleopteran) which commonly attack seasoned timbers; and

(c) Termites – wood destroying insects, insect group (order isopteran) which commonly attach seasoned timbers;

**Timber Pest Inspection** means an inspection carried out under clause 5.1.

### 4. PROVISION OF SERVICES

4.1 Inspectit Homes agrees to provide to the Customer the Services on the terms outlined in this Inspection Agreement.

4.2 The Customer must return a signed copy of this Inspection Agreement to Inspectit Homes prior to Inspectit Homes providing the Services.

## **5. SCOPE OF SERVICES**

5.1 The Timber Pest Inspection will involve one (1) of the following inspections:

- (a) A pre-purchase timber pest inspection;
- (b) A timber pest inspection;
- (c) A termite inspection; or
- (d) A pre-purchase termite inspection (not recommended).

5.2 The Building Inspection will involve a Report on the condition of the following areas:

- (a) the interior;
- (b) the roof void;
- (c) the exterior;
- (d) the subfloor; and
- (e) the roof exterior.

## **6. PERFORMANCE OF SERVICES**

### **Timber Pest Inspections and Building Inspections**

6.1 In respect of both Timber Pest Inspections and Building Inspections, the Customer warrants that:

(a) they understand that any inspections conducted by Inspectit Homes will be non-invasive. The Inspector:

(i) will not cut, break part, dismantle, dig, gouge, force, remove or otherwise move any objects, including but not limited to roofing, wall and ceiling sheeting, ducting, foliage, mouldings, debris, roof insulation, sarking, sisalation, floor or wall coverings, sidings, fixtures, floors, pavers, furnishing, appliances or personal possessions;

(ii) cannot see or inspect inside walls, between floors, inside skillion roofing, inside the eaves, behind stored goods in cupboards or in other areas that are concealed or obstructed; and

(iii) cannot see or inspect the roof void if the roofing insulation conceals the ceiling timbers and, in the Inspector's reasonable opinion, the concealment makes the inspection of the area unsafe;

(b) they understand that any inspections conducted by Inspectit Homes will be limited to an inspection of those areas and sections of the Property to which Reasonable Access is available and permitted at the time the inspection is to be conducted;

(c) they understand that the Inspector:

(i) may use a probe or a screwdriver to tap and sound timbers for the purpose of checking for terminate damage;

(ii) may use a moisture meter to check moisture levels in walls that back onto wet areas; and

(iii) may use a moisture meter to check moisture levels in walls that do not back onto wet areas if, in the Inspector's reasonable opinion, the visual inspection indicates that further testing should be conducted on the area.

6.2 Nothing in clause 6.1 affects or limits the operations of other clauses in this Inspection Agreement.

### **Timber Pest Inspections**

6.3 In respect of Timber Pest Inspections, the Customer warrants that:

(a) they understand that the Timber Pest Inspections will be conducted as follows:

(i) In the case of a pre-purchase timber pest inspections, be conducted in accordance with the requirements of Australian Standard AS 4349.3-2010 Inspection of Buildings Part 3;

(ii) In the case of all timber pest inspections, be conducted in accordance with the requirements of Australian Standard AS 4349.3-2010 Inspection of Buildings Part 3;

(iii) In the case of termite inspections, be conducted in accordance with the requirements of Australian Standard AS 3660.2-2000 Termite Management Part 2; and

(iv) In the case of pre-purchase termite inspections, be conducted in accordance with the requirements off Australian Standard AS 3660.2-2000 Termite Management Part 2.

(b) they have been informed of their right to obtain a copy of the Australian Standard AS 4349.3-2010 Inspection of Buildings Part 3 of the Australian Standard AS 3660.2-2000 Termite Management Part 2 from Inspectit Homes at their own cost or by obtaining a copy directly from Standards Australia;

(c) they have been informed that pre-purchase termite inspections are not recommended for pre-purchase inspections;

(d) they understand that furnishings and other household items and objects may conceal evidence of Timber Pests;

(e) they have been informed that it if the Customer is not the owner of the Property, that the Customer should obtain from the owner of the property:

(i) a statement as to any timber pest activity or damage to the Property that the owner is, or ought to be, aware of;

(ii) details of any treatments that have been carried out at the Property; and

(iii) copies of Reports and / or paperwork issued in respect of prior treatments.

(f) if any information has been obtained as recommended in clause 6.3(h), this information has been provided to Inspectit Homes in its entirety;

(g) they understand that any Report:

(i) in the case of pre-purchase timber pest inspections or timber pest inspections, will be confined to Reporting on the discovery, or non-discovery, of infestation and/or damage caused by subterranean and dampwood termites (white ants), borers of seasoned timber and wood decay fungi (rot), present on the date and time of the Inspection;

(ii) in the case of all termite inspections, will be confined to Reporting on the discovery, or non-discovery, of infestation and/or damage caused by subterranean and dampwood termites (white ants) present on the date and time of the Inspection;

(iii) expressly excludes the commenting on borers of seasons timber;

(iv) expressly excludes the commenting on wood decay fungi (rot) unless the Inspector, in their reasonable opinion, considers that the wood decay fungi (rot) is acting as a conducive condition for termite activity;

(v) expressly excludes commenting on any other pests, including but not limited to dry wood termites (of the Kalotermitidae family) and the European house porer (Hyloterpes bujulus Linnaeus);

(vi) expressly includes commenting on mildew and non-wood decay fungi (mould) as the same is not considered a timber pest. However, the Customer understands that the presence of mildew and non-wood decay fungi may indicate poor ventilation or the presence of termites, wood decay or water leaks;

(vii) will Report on termite treatment, however the Customer should assume that any applied treatment was applied as curative and not as a preventative measure;

(viii) will imply that any inaccessible or partly inaccessible area (s) or section(s), or any area(s) or section(s) in which Reasonable Access was not available or permitted at the time in the inspection took place are, or have not been, infested by termites or timber pests;

(ix) cannot, will not, and does not guarantee that an infestation and / or damage does not exist in any inaccessible or partly inaccessible area(s) or section(s), or any area(s) or section(s) in which Reasonable Access was not available or permitted at the time in the inspection took place, or that future infestation of Timber Pests will not occur or be found in the above areas;

(x) cannot, will not, and does not comment on or state the extent of any timber pest damage. If evidence of timber pest activity and / or timber pest damage is noted in the structure(s) or the grounds of the property, then Inspectit Homes recommends that:

(A) the Customer obtain an invasive timber pest inspection from a qualified person to determine the full extent of the damage and the extent of any repairs that may be required, as there may be structural or concealed damage within the building(s); and

(B) the Customer obtain an invasive timber pest inspection from a qualified person to determine the full extent of the damage and the extent of any repairs that may be required, as there may be damage in concealed areas.

(h) they understand that Inspectit Homes has advised the Customer to seek a timber and pest inspection completed by a fully qualified and insured Inspector and one that is conducted in accordance with AS 4349.3-2010.

## **Building Inspections**

6.4 In respect of Building Inspections, the Customer warrants that:

(a) they understand that the inspection of the Building Elements as outlined in Appendix C of AS4349.1-2007, except for strata title properties where the inspection will be in accordance with Appendix B of AS4349.1-2007;

(b) they understand that the purpose of the inspection is to identify major defects, the incidence of minor defects and safety hazards associated with the Property at the time of the inspection;

(c) they have been informed of their right to obtain a copy of Australian Standard AS4349.1-2007 from Inspectit Homes at their own cost or by obtaining a copy directly from Standards Australia;

(d) they understand that the inspection is for the purpose of comparing the inspected building with a building constructed to the generally accepted practice at the time the building was constructed and to ensure that the inspected building has not suffered a significant loss of strength or performance;

(e) they understand that the inspection is not to ensure compliance with or otherwise comment on the requirements of any applicable laws, regulations, ordinances, local laws, by-laws or the like or as a warranty or an insurance policy against problems that may develop with the building in the future;

(f) they understand that the inspection shall comprise a visual assessment of the items listed in Appendix B or Appendix C to AS4349.1-2007 for the structures within 30 metres of the building and within the site boundaries (including fences);

(g) understand that, subject to Reasonable Access, the Inspector and the Report will only comment on the interior, the roof void, the exterior, the subfloor, and the roof exterior.

(h) understand that:

(i) where a Major Defect has been identified, the Inspector will give a reasonable opinion on why the Inspector considers the defect to be a Major Defect, and provide sufficient particulars so that the Customer can specifically identify the location of the defect;

(ii) any estimates provided in the Report are merely opinions of possible costs that the Customer might incur, based on the Inspector's reasonable assessment having regard to their experience and knowledge of the industry;

(iii) any estimates provided in the Report are not to be considered a calculation of the cost or quote to perform any works;

(iv) the Inspector does not warrant the accuracy of the estimates and disclaims all liability in respect of any estimates;

(v) the Customer should obtain a separate Report on any common areas in respect of strata title properties;

(vi) the identification of defects is contingent upon the prevailing weather conditions at the time of the inspection, and defects may only be identified in differing conditions;

(vii) the Report is prepared and presented under the assumption that the Property will continue to be used for residential purposes, unless otherwise agreed.

(i) they understand that the inspector will not inspect or Report on:

(i) an estimate of the cost for rectifying any Defects.

(ii) the presence of any Timber Pest Activity, save for Reporting on any damage that is visible during the Building Inspection;

(iii) the presence of any asbestos or materials containing asbestos, save for any general observations as to the same gathered during the inspection;

(iv) the presence of any mould, mildew and non-wood decay fungi;

(v) any magnesite flooring;

(vi) any items listed in Appendix D to AS4349.1-2007;

(vii) any swimming pool or spas located on the Property;

(viii) any defects that may not be apparent due to the prevailing weather conditions at the time of the inspections.

## **7. EXCLUSION OF LIABILITY**

7.1 Inspectit Homes expressly excludes all liability for any loss or damage suffered by the Customer, arising out of or otherwise connected with the provision of services under this Inspection Agreement, however caused and to the full extent possible at law, including but not limited to circumstances where:

(a) the Customer fails to follow Inspectit Homes' reasonable advice; or

(b) the Customer does not comply with the terms contained within this Inspection Agreement.

7.2 Clause 7.1 does not exclude the warranties a Customer may rely upon under Schedule 2 (Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth).

7.3 Inspectit Homes' liability for a breach of any condition or warranty implied by Part 3-2 Division 1 of the *Australian Consumer Law* is limited to, in the case of services provided:

(a) the re-supply of the services; or

(b) the payment of the cost of having the services re-supplied.

## **8. INDEMNITY AND RELEASE**

8.1 The Customer releases and indemnifies Inspectit Homes from all liability in respect of any breach of this Inspection Agreement, including but not limited to:

(a) the Customer suffering loss as a result of failing to follow Inspectit Homes' reasonable advice;

(b) the Customer's unauthorised distribution of any Report issued by Inspectit Homes; and

(c) any defects not identified in any Report issued by Inspectit Homes because the defect was not identifiable at the time of the inspection as outlined in this Inspection Agreement.

## **9. DISPUTE RESOLUTION**

9.1 This clause applies to any dispute arising out of or otherwise connected with the provision of services under this Inspection Agreement.

9.2 The Customer must notify Inspectit Homes of any complaint in writing and within seven (7) days of the services being provided or seven (7) days from the provision of the Report, whichever is the later.

9.3 The Customer agrees to fully cooperate with Inspectit Homes and its representatives while they are investigating any complaint, including providing access to the Property and providing any information that Inspectit Homes or its representatives reasonably believe needs to be provided to assist with the investigation of the complaint.

9.4 Inspectit Homes will review your complaint and respond in writing to your complaint within twenty-eight (28) days.

9.5 If the Customer is unhappy with Inspectit Homes' response under clause 9.4, then the Customer must, within twenty-one (21) days of receiving Inspectit Homes' response, refer the matter to mediation, using a mediator from the Institute of Arbitrators and Mediators of Australia.

9.6 The cost of the mediation will be shared by Inspectit Homes and the Customer equally, unless otherwise agreed.

9.7 In the event that the Customer does not follow the above procedure prior to commencing litigation against Inspectit Homes, then the Customer agrees to fully indemnify Inspectit Homes against any awards, costs, legal fees and expenses (on an indemnity basis) incurred by Inspectit Homes in adjourning, staying, defending or dismissing any proceedings commenced in lieu of the Customer's non-compliance with the above clauses.

## **10. RELIANCE ON REPORT BY THIRD PARTIES**

10.1 Subject to the terms of this Inspection Agreement, only the Customer will have any rights against Inspectit Homes.

10.2 Inspectit Homes will not be liable for any third party's loss or damage as a result of their reliance on any Report issued by Inspectit Homes, however caused.

10.3 A third party relying upon this Report does so entirely at their own risk.

10.4 However, if the Report is commissioned by a real estate agent or vendor to be used in relation to an auctioned property, then the Report may be relied upon by the purchaser, provided that the purchaser accepts the terms of this Inspection Agreement.

10.5 The purchaser will have a period of fourteen (14) days from the date of this Report to exercise its right to rely upon the Report in accordance with clause 10.4, and may exercise its rights by providing written notification of this intention to Inspectit Homes.

10.6 The Report may not be sold, transferred or provided to another person for any legal consideration or otherwise without Inspectit Homes' express written consent, unless authorised to do so under any applicable laws, regulations, local laws, by laws, ordinances or the like.

10.7 Inspectit Homes may attach any further conditions that it in its absolute discretion deems necessary to its consent granted under clause 10.6.

## **11. BREACH OF CONTRACT**

1.1 A party is in breach of this Inspection Agreement if:

(a) the party fails to comply with its obligations under this Inspection Agreement;

(b) is in breach of any general law duties that, subject to the other express terms in this Inspection Agreement, may otherwise be implied into the same;

(c) in the event that the Customer is a corporation, if the Customer becomes insolvent or commits an act of insolvency or enters into voluntary administration, as those terms are defined in the *Corporations Act 2001* (Cth) or any other relevant legislation; or

(d) in the event that the Customer is a natural person, if the Customer becomes bankrupt or commits an act of bankruptcy as those terms are defined in the *Bankruptcy Act 1966* (Cth) or any other relevant legislation.



## **12. TERMINATION**

12.1 Inspectit Homes or the Customer may terminate this Inspection Agreement if the other party breaches its obligations as outlined at clause 11 or as otherwise permitted at law.

12.2 If this Inspection Agreement is terminated, then the termination will not prejudice the non-breaching party's legal rights or remedies against the other party, including a right to recover any moneys owing under this Inspection Agreement.

12.3 The obligations of the parties that by their nature could reasonably be construed as applying beyond the termination of this Inspection Agreement will survive the termination of the same and continue to apply.

## **13. ENTIRE AGREEMENT**

13.1 This Inspection Agreement is governed by and must be construed according to the laws of Queensland.

13.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of or exercising jurisdiction in Queensland with respect to any Claims which may be brought at any time relating in any way to this Inspection Agreement.

## **14. WAIVER**

14.1 A waiver by any Party of any right arising from a breach of this Inspection Agreement must be in writing and signed by the Party granting the waiver.

## **15. GENERAL**

15.1 This Inspection Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior understanding or agreement between them.

15.2 The Parties agree to be immediately bound by this Inspection Agreement upon exchange of executed copies or originals or copies of this Inspection Agreement.

15.3 If all or part of a provision of this Inspection Agreement is void, voidable, unenforceable or illegal for any reason but would not be if it were read down (and it is capable of being read down), the provision will be read down accordingly.

15.4 Inspectit Homes may, in their absolute discretion, review and amend this Inspection Agreement from time to time. Any amendments made will take effect on the day that Inspectit Homes notifies the Customer of these amendments.

15.5 Inspectit Homes excludes all liability for any loss or damage, however caused, including without limitation direct or indirect, special, incidental, or consequential damages, losses or expenses arising in connection with this quote amount or use or inability to use by any Party, or in connection with any failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure. This clause applies even in circumstances where Inspectit Homes, or its representatives, are advised of the possibility of such damages, losses or expenses. Hyperlinks to other internet resources are at the Customer's own risk; the content, accuracy, opinions expressed, and other links provided by these resources are not investigated, verified, monitored, or endorsed by Inspectit Homes.

15.6 The Customer agrees to the provisions in the Electronic Transactions Act 2001 (Qld) to the extent that the same applies to this Inspection Agreement and any dealings between the Parties.